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Jan. 3, 07

BY FACSIMILE AND REGULAR MAIL

Hon. Charles L. Brieant
United States District Judge
Southern District of New York
United States Courthouse
300 Quarropas Street
White Plains, NY 10601

Re: Putnam Humane Society v. Linda Nelson
7:07 -cv- 09892 - CLB
Re: Linda Nelson v. Putnam County et al

Dear Judge Brieant:

Late this afternoon I received a facsimile message from Ms. Marzolla of the Feerick law firm purporting to voluntarily withdraw the action entitled Linda Nelson v. County of Putnam et al. The letter asked whether an appearance was still necessary, and I was advised by Mr. Feerick's secretary that no appearance was necessary.

I note that there is scheduled for January 4, 07 an action entitled Putnam Humane Society v. Linda Nelson which is entirely separate from Nelson v. County of Putnam et al. I represent the Plaintiff in that action. The Feerick law firm represents defendant Linda Nelson in that case. Accordingly I will appear and Mr. Feerick should also. Of course, I will appear in connection with that case.

The case of Linda Nelson v. Putnam County was last on before Your Honor on November 16, 07, scheduled to next be on the Court's calendar on January 4, 08. I respectfully call your attention to the fact that Mr. Feerick waited until the afternoon of January 3, 07 to attempt to withdraw the action. Mr. Feerick's reason is plain enough. Mr. Feerick realized that you would assume that all defendants would welcome the withdrawal and simply treat the case as withdrawn without giving me an opportunity to be heard. As Mr. Feerick is well aware, I have good reason to oppose the withdrawal.

The action that Mr. Feerick is withdrawing is based on the entirely frivolous allegation that Deputy Sheriff Barbara Dunn arrested his innocent client, Linda Nelson, solely in order to enrich the Humane Society. This action was brought to provide a platform to publicize his allegations while being immunized from liability for defamation by reason of the "litigation" privilege. Photographs depicting the conditions in which Ms. Nelson left her dogs were conveniently suppressed by Judge Collins of the Kent Justice Court. The publicity engendered by this frivolous law suit and Mr. Feerick's accompanying falsehoods have greatly damaged the Putnam County Humane Society which relies upon voluntary contributions from the public. The continued viability of the only shelter for animals in Putnam County - a shelter that never kills a healthy animal - is threatened. That is why I have volunteered my services as pro bono counsel to the Humane Society.

The Humane Society and Officer Dunn have every right to sue Mr. Feerick and his client for malicious prosecution. However, our future action for malicious prosecution can only be brought if the Linda Nelson v. County of Putnam action is dismissed on the merits. That is why Mr. Feerick tried to voluntarily withdraw his action without giving me an opportunity to be heard in opposition.

Mr. Feerick's purported voluntary withdrawal is a nullity. It was filed at a time when the action was stayed (at his request.)

Contrary to Ms. Marzolla's statement, a motion to dismiss (which I liken to a Motion for Summary Judgment) was brought by the attorney for Putnam County. Accordingly, Rule 41a does not authorize voluntary withdrawal.

Furthermore, by abruptly withdrawing the action while it was stayed at his request, Mr. Feerick is estopped from asserting that no answer has been interposed.

I shall file a Motion asking that the voluntary withdrawal be rejected and that Mr. Feerick be sanctioned for bringing a frivolous law suit. Until then, I ask that Your Honor continue the stay for all purposes other than my filing the motion that I referred to above and interposing an answer on behalf of Ms. Dunn and the Putnam County Humane Society.

Respectfully,


DAVID BERNHEIM

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